



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Genesys Research, Inc.

File: B-229892

Date: March 3, 1988

DIGEST

A late proposal was properly rejected after the initial evaluation in accordance with alternate late proposal clause, where the agency found that the proposal did not offer any significant cost or technical advantage to the government.

DECISION

Genesys Research, Inc. (GRI), protests the rejection of its proposal as late under request for proposals (RFP) No. NIH-ES-87-04, issued by the National Institute of Environmental Health Sciences (NIEHS), Department of Health and Human Services (HHS).

We deny the protest.

The RFP sought proposals for the testing of the cytogenetic properties of approximately 100 chemicals. Five proposals were received by the closing date. GRI's proposal was received 1 day late. The RFP incorporated by reference Public Health Service Acquisition Regulation (PHSAR) § 352.215-10, 51 Fed. Reg. 43357 (1986), 52 Fed. Reg. 44397 (1987) to be codified at 48 C.F.R. § 352.215-10, which states:

"Notwithstanding the procedures contained in the provision of this solicitation entitled Late Submissions, Modifications, and Withdrawals of Proposals, a proposal received after the date specified for receipt may be considered if it offers significant cost or technical advantages to the Government, and it was received before proposals were distributed for evaluation, or within five calendar days after the exact time specified for receipt, whichever is earlier."

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PHSAR § 315.412(c)(2) requires the contracting officer to determine, with the assistance of cost and technical personnel, whether the proposal meets the criteria of the regulation; that is, if the proposal offers significant cost or technical advantages to the government. Thus, the contracting officer submitted GRI's proposal, along with those timely received, to the peer review panel for evaluation. GRI's proposal was one of three found to be technically acceptable by the panel. The contracting officer also consulted with a contract specialist and the project officer to determine whether GRI's proposal offered any significant cost or technical advantages.^{1/}

GRI's proposal offered the highest cost and the evaluation report of the peer review panel established that two other proposals were received that were technically equal or better. The project officer also found that there was "nothing that would lead him to believe that further negotiations with GRI would result in advantages over the other acceptable offers." Therefore, the contracting officer concluded that GRI offered no significant cost or technical advantage to the government, and excluded it from further consideration.

An agency may consider a proposal that is received after the date required in the solicitation only if one of the exceptions to the rule against considering late proposals applies. Design Data Systems, B-225718.2, Mar. 5, 1987, 87-1 CPD ¶ 253; ComPath Business Telephone Systems, B-213575, May 22, 1984, 84-1 CPD ¶ 543. GRI's proposal was late and under HHS's applicable rules could only be considered if it offered a significant cost or technical advantage.

We find that the contracting officer's decision to reject GRI's proposal as late was reasonable, since, as submitted, the proposal offered neither a significant cost nor technical advantage to NIEHS. In this regard, "significant cost or technical advantage" clearly contemplates that an offer be more than merely technically acceptable.

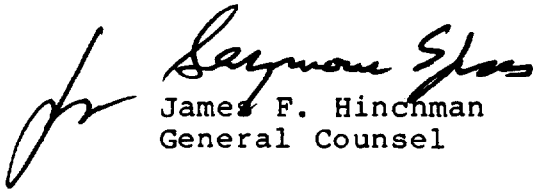
GRI claims that NIEHS applied the "significant advantage test" prematurely. Since the RFP contemplated best and final offers (BAFO's) and GRI would apparently have been

^{1/} GRI has urged that alleged inconsistencies in the record cast doubt on whether the contracting officer fulfilled her responsibilities to consult with appropriate personnel to make this determination. From our review of the record, we find that the contracting officer properly fulfilled her responsibilities in accordance with PHSAR § 315.412(c)(2).

included in the competitive range, but for its late submission, GRI argues that it would be in the government's best interests to conduct discussions and solicit and review GRI's BAFO prior to deciding whether it met the "test," since this might show that GRI's proposal as revised offered the requisite significant cost or technical advantage.

We agree with HHS that the determination of whether a late proposal offers a significant advantage is properly made from evaluating the initial proposal. PHSAR § 315.412(c)(2) provides that the contracting officer determine whether a late proposal meets the requirements of PHSAR § 352.215-10 (quoted above) and "therefore can be considered." This provision clearly indicates that an affirmative determination be made whether a late proposal offers the requisite "significant advantage" before the proposal "can be considered." It necessarily follows that this determination be made before discussions are conducted and BAFO's are received. Moreover, the late proposal clause at issue is based upon the same exception to the requirement that late proposals be rejected that was contained in Federal Procurement Regulation (FPR) § 1-3.802-2 (1964 ed.).^{2/} Our decisions discussing the FPR provision recognize its implicit requirement that a finding of significant technical or cost advantage be made before a late proposal may be further considered. See e.g. Capital Systems Group, Inc., 59 Comp. Gen. 717 (1980), 80-2 CPD ¶ 190; National Motors Corporation, et al., B-189933, June 7, 1978, 78-1 CPD ¶ 416 at 22-23.

The protest is denied.


James F. Hinchman
General Counsel

^{2/} The provisions of FPR § 1-3.802-2 were not made part of the Federal Acquisition Regulation (FAR). However, the Public Health Service, HHS, after notice to the Chairman of the Civilian Agency Acquisition Council, published PHSAR §§ 315.412(c) and 352.215-10 as deviations from the FAR. 51 Fed. Reg. 43355 (1986); 52 Fed. Reg. 44397 (1987).